

§ 655.1 Scope and purpose of this subpart.

Section 214(c)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with appropriate agencies before authorizing the classification of aliens as H-2B workers. Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(D) designate the Secretary of Labor as an appropriate authority with whom DHS consults regarding the H-2B program, and specifies that the Secretary of Labor, in carrying out this consultative function, shall issue regulations regarding the issuance of temporary labor certifications. DHS regulations at 8 CFR 214.2(h)(6)(iv) further provide that an employer's petition to employ H-2B nonimmigrant workers for temporary non-agricultural employment in the United States (U.S.), except for Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor (Secretary).

(a) *Purpose.* The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers, and that

(2) The employment of the H-2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Scope.* This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the H-2B nonimmigrant classification, as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b), section 101(a)(15)(H)(ii)(b) of the INA. It also establishes obligations with respect to the terms and conditions of the temporary labor certification with which H-2B employers must comply, as well as their obligations to H-2B workers and workers in corresponding employment. Additionally, this subpart sets forth integrity measures for ensuring employers' continued compliance with the terms and conditions of the temporary labor certification.

§ 655.2 Authority of the agencies, offices, and divisions in the Department of Labor.

(a) *Authority and role of the Office of Foreign Labor Certification (OFLC).* The Secretary has delegated authority to make determinations under this subpart, pursuant to 8 CFR 214.2(h)(6)(iii)(D) and (h)(6)(iv), to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to OFLC. Determinations on an *Application for Temporary Employment Certification* in the H-2B program are made by the Administrator, OFLC who, in turn, may delegate this responsibility to designated staff members, e.g., a Certifying Officer (CO).

(b) *Authority of the Wage and Hour Division (WHD).* Pursuant to its authority under section 214(c)(14)(B) of the INA, 8 U.S.C. 1184(c)(14)(B), DHS has delegated to the Secretary certain investigatory and enforcement functions with respect to terms and conditions of employment in the H-2B program. The Secretary has, in turn, delegated that authority to WHD. The regulations governing WHD investigation and enforcement functions, including those related to the enforcement of temporary labor certifications, issued under this subpart, may be found in 29 CFR part 503.

(c) *Concurrent authority.* OFLC and WHD have concurrent authority to impose a debarment remedy under § 655.73 or under 29 CFR 503.24.

§ 655.3 Territory of Guam.

This subpart does not apply to temporary employment in the Territory of Guam, except that an employer who applies for a temporary labor certification for a job opportunity on Guam will need to obtain a prevailing wage from the U.S. Department of Labor (DOL) in accordance with § 655.10, subject to the transfer of authority to set the prevailing wage for a job opportunity on Guam to DOL in title 8 of the Code of Federal Regulations. DOL does not certify to DHS the temporary employment of H-2B nonimmigrant foreign workers, or enforce compliance with the provisions of the H-2B visa program, in the Territory of Guam.